

**Before the
Federal Communication Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Universal Service Reform)	WTC Docket No. 10-208
)	
Mobility Fund)	

COMMENTS OF WORLDCALL INTERCONNECT

Worldcall Interconnect, Inc. (“WCX”) hereby respectfully submits these comments in response to the Federal Communications Commission’s (“Commission” or “FCC”) *Notice of Proposed Rulemaking* (“NPRM”) of October 14, 2010 in the above-captioned docket.

I. Introduction

In implementing Telecommunications Act of 1996, the FCC addressed three specific areas where Congress observed market failure in the provision of advanced communications capability to our society. First, the FCC interpreted the Act’s provisions and created the Universal Service Fund. As part of its original order the Commission stated:

Congress directed the Commission and the states to devise methods to ensure that “[c]onsumers in all regions of the Nation, including *low-income consumers* and those in *rural, insular, and high cost* areas . . . have access to telecommunications and information services ... at rates that are reasonably comparable to rates charged for similar services in urban areas.” Congress further directed the Commission to define additional services *for support for eligible schools, libraries, and health care providers*, and directed the Commission to “establish competitively neutral rules . . . to enhance, to the extent technically feasible and economically reasonable, access to advanced telecommunications and information services for all public and non-profit elementary and secondary school classrooms, health care providers, and libraries.” (Emphasis added.)

Fifteen years ago there was hearty debate on the best way to establish a mechanism to administer the public policy goals in light of perceived market failure by Congress. Should there

be three funds – one each for low income, high cost and schools? How do we shift from a highly regulated and complicated network service business model with implicit cross subsidies to an explicit system, and how do we make such subsidies both “competitively neutral” and “technology neutral?”

The general consensus at that time was that the only way to maintain uninterrupted service to those in need was to embrace the current business model of Plain Old Telephone Service. The thought was that staffing the new system with quality people would make up for inherent shortcomings in not modernizing the design and purpose of the subsidy program, and that modernization could take place later. The FCC then instituted the much criticized “Identical Support Rule” which has created arbitrage opportunities and clear gaps in discriminating between and among areas and providers.

Looking back now, it is clear that the FCC could not have been more wrong in these decisions. While technology and innovation has driven the cost of service down for the rest of the industry, the FCC has struggled with the bloating of the USF subsidy system because the incumbents and current recipients now believe the subsidy system is an entitlement for their specific business model of supplying legacy voice services. The current system is neither technology or competitively neutral. For political reasons, the FCC’s focus over the last 5 or more years has shifted from implementing the statute to trying to “cap” expenditures in various ways. But, until very recently the FCC did not examine the fundamental premises of the system as originally devised. At present, the FCC policy on existing USF is not truly concerned with whether the system is working; they just want the fund to stop growing. As a result, the FCC has instituted a series of artificial measures to “cap” the fund while preserving revenue flows to the

incumbents without truly trying to understand why the goals of the Act remain elusive at the same time that expenditures continue to explode.

The creation of this new “Mobility Fund” is the first attempt of the FCC to correct the mistakes made over the last 15 years. WCX wholeheartedly welcomes this change, but we are concerned that the FCC may use its modest attempt to modernize USF by creating the “Mobility Fund as an excuse to continue to ignore the bloated nine billion dollar per year discriminatory subsidy mechanisms that still exists.

II. WCX’s eligibility for Mobility Fund support is threatened by the Commission’s continued refusal to act upon WCX’s New York ETC petition. The Commission must resolve WCX’s petition and the outstanding issues regarding how CETCs are to operate exempt from the cap before continuing.

Specifically, we propose that a provider be required to (1) be designated (or have applied for designation) as a wireless Eligible Telecommunications Carrier (“ETC”) pursuant to Section 214(e) of the Act, by the state public utilities commission (“PUC”) (or the Commission, where the state PUC does not designate ETCs) in any area that it seeks to serve; (2) have access to spectrum capable of 3G or better service in the geographic area to be served; and (3) certify that it is financially and technically capable of providing service within the specified timeframe. ... We seek comment on these minimum requirements, inquire whether other minimum standards are desirable, and solicit comment on other provider eligibility issues. (Para. 45)

Alternatively, we seek comment on allowing entities that have applied for designation as ETCs in the relevant area to participate in a Mobility Fund auction. (Para. 48)

The statute also provides that in states where the state commission lacks jurisdiction over the carrier seeking ETC status, which is sometimes the case for wireless carriers, this Commission designates the ETC and the service area. How can the Commission best interpret these and all the interrelated requirements of Section 214(e) to achieve the purposes of the Mobility Fund? (Para. 49)

We also propose that, if we were to adopt a rule allowing an applicant to participate in the auction while its ETC designation status is pending, the applicant would be required in its long-form application to demonstrate its ETC status by, for example, providing a copy of its ETC designation order from the relevant state PUC. We seek comment on these proposals and on the specific

information that winning bidders should be required to provide to make the required showings. (Para. 80)

WCX meets each of the eligibility requirements proposed in the *NPRM*. WCX has been designated as an ETC in 71 Texas rural wire centers and has petitioned the FCC for designation in its New York licensed area. WCX holds 700MHz B-Block licenses in Texas, New York, Puerto Rico, and the U.S. Virgin Islands. The company is also financially and technically capable of providing service within the specified timeframe. If the Commission designates all or parts of the areas covered by WCX's licenses as unserved, then the company intends to submit bids for Mobility Fund support.

WCX's enthusiasm for the Mobility Fund program, however, is tempered by Commission's failure to act on the company's New York ETC petition for over two years. The petition was submitted on October 20, 2008 and was followed by a public comment cycle in which the Computer & Communications Industry Association supported the petition and no parties opposed it. WCX followed with numerous meetings and communications with Commission staff and the Universal Service Administrative Company, but to no avail. If the Commission continues refuse to act on WCX's ETC petition, the company's eligibility for Mobility Fund support in New York will be for naught.

WCX believes that its petition has fallen into regulatory limbo because WCX expressly conditioned the petition on the company keeping its own costs, as permitted by the *CETC Interim Cap Order*.¹ In our petition, WCX laid out how to actually implement the "own cost exception" and proposed a specific deployment plans as well as checks and balances to be subsidized based on our own cost and not the dreaded "identical support mechanism." WCX

¹ See, Order, *In re High-Cost Universal Service Support, Federal-State Joint Board on Universal Service*, WC Docket No. 05-337 and CC Docket No. 96-45. FCC 08-122, 23 FCC Rcd 8834 (rel. May 2008).

believes that our application has sat dormant due to the FCC not actually wanting to tackle implementation of the “own cost” exemption to the cap.

WCX was the first CETC to announce its intent to operate exempt for the cap and submit a petition to that effect. But the Commission cannot absolve itself of its responsibilities in this instance merely because WCX was the first through the door. A two-year plus waiting period is unacceptable for a company that is ready to enter the market and begin providing wireless service in high-cost areas.

While the Commission has sat on WCX’s petition, the company has been working steadily in anticipation of the designation it is entitled to. The company has developed multiple network development plans and negotiated agreements for potential tower locations, switches, e-nodes, bandwidth, and customer premises equipment. WCX has developed a detailed operating budget and dependency diagram that will go into effect upon designation. WCX has done all that it can to bring wireless service to its New York license area and to operate exempt from the cap. Now it is up to the Commission to grant the company’s petition so that it can enter the market and begin providing competitive wireless services.

The Commission is obligated to implement the unambiguous express holding of the *CETC Interim Cap Order* that “a competitive ETC will not be subject to the interim cap to the extent that it files cost data demonstrating that its costs meet the support threshold in the same manner as the incumbent [local exchange carrier].”² WCX has emphasized in its various filings that the Commission must honor the exception to the cap by permitting CETCs to use their own costs and recover support. That the Commission will not do so amounts to a broken promise and is an unreasonable dereliction of its responsibilities. This is especially so given that the

² See, Order, *In re High-Cost Universal Service Support, Federal-State Joint Board on Universal Service*, WC Docket No. 05-337 and CC Docket No. 96-45, FCC 08-122, ¶ 31, 23 FCC Rcd 8834 (rel. May 2008).

Commission has represented in federal court that the exemption is presently available to CETCs.³

That the Commission's failure to address WCX's New York ETC petition may now also keep the company from receiving Mobility Fund support that it is eligible for only adds to the injustice. The Commission must no longer act on as though the *CETC Interim Cap Order* does not exist and should now grant WCX's petition so that the company can enter the bidding process with a long-overdue resolution to its petition.

Further new applicants must not suffer as WCX has and a reasonable time frame to respond to ETC applications must be adhered to.

III. Implementation of the proposed two-stage application process will require that the Commission resolve the outstanding issues related to CETCs ability keep their own costs and operate exempt from the interim cap.

We propose a two-stage application process similar to the one we use in spectrum license auctions. ... We seek comment on the use of this application process to ensure compliance with our eligibility requirements. (Para. 46)

Here we seek comment on the specifics of the "short-form" application for a Mobility Fund auction. (Para. 59)

The two-stage, two-form application process proposed in the *NPRM* on its face seems logical, however, based upon our experience in attempting to implement the "Cap exception," implementation will prove difficult. As pointed out by USAC in its denial of WCX's attempt to implement the "own cost exemption" for its Texas ETC locations, without an express new form to implement the new fund, USAC will be unable to disburse funds. Importantly, the Office of Management and Budget ("OMB") has stated that it will not approve any future USF high-cost

³ See FCC Response Brief on Appeal, *Rural Cellular Association v. FCC*, D.C. Circuit Court of Appeals, No. 08-1284 and 08-1285, pp. 37, 59-60, 62-64 (March 25, 2009) ("The availability of this exception, which neither Petitioners nor their amicus even mention, also undercuts their allegation that the interim cap will prevent newly designated competitive ETCs from receiving high-cost support in states that receive no competitive ETC high-cost support prior to March 2008. Br. 49. A competitive ETC will be eligible for support in these states if it makes the cost showing required by the *Order*.").

support forms until the FCC “address[es the] outstanding issues related to the limited exception from application of the interim cap to a competitive eligible telecommunications carrier that files its own cost data.”⁴ Without OMB-approved forms, the Commission will not be able to collect information and/or bids from eligible ETCs as proposed in the NPRM.

This requirement from the OMB that the FCC resolve how competitive carriers are expected to keep their own costs is a result of the non-action of the Commission and USAC (the FCC-appointed USF administrator) on WCX’s New York wireless ETC petition as well as other parties attempts to implement the own cost exception. For example, when WCX submitted local switching support and high-cost data to USAC as contemplated by the *CETC Interim Cap Order*, USAC refused to process the data on the grounds that there were not OMB-approved forms available for these submissions. OMB states that denial of an entitlement based solely on the absence of a form, however, is a violation of the Paperwork Reduction Act. In response to the years of non action by both the FCC and USAC, WCX filed comments with the OMB, who, in turn, conditioned approval of any future high-cost forms on a resolution of how CETCs are to keep their own cost data. Therefore, as a prerequisite to receiving OMB approval for any new proposed short and long forms, the Commission must first resolve how competitive ETCs are to operate exempt from the cap and keep their own costs. In short, the FCC must tend to old business before it starts new business.

IV. The Mobility Fund must include rural areas with large non-residential populations that are not represented in census data.

We propose to identify unserved areas on a census block basis and, because individual census blocks are so small, we propose to conduct bidding to offer Mobility Fund support in unserved census blocks grouped by census tracts. We further seek comment on alternative ways to distribute support to these unserved areas. (Para. 20)

⁴ Notice of Office of Management and Budget Action ICR Ref. No.: 200901-3060-012; OMB Control No.: 3060-0986 (May 3, 2009).

We seek comment on whether census tracts are the most appropriate basic geographic unit for providing support to expand coverage. Are there other geographic units by which we might group unserved census blocks that might better balance the need to identify discrete unserved areas for which we propose to require coverage under the Mobility Fund with business plan requirements of wireless providers? (Para. 26)

We also seek comment on whether we should take into account characteristics such as road miles, traffic density, and/or community anchor institutions in determining the number of units in each unserved census block to be used for assigning support under the Mobility Fund. ... Using such additional factors in determining the units in each unserved area may better represent the public benefits of providing new access to mobile services. Are there other factors that we should take into account when assessing coverage of unserved areas, such as work or recreation sites; anchor institutions such as schools, libraries, and hospitals; or accessibility to a road system? (Para. 27)

Tying eligibility for Mobility Fund support to static locations, such as permanent residences, is incompatible with the Fund's purpose of promoting "the availability of *mobile* voice services in as much of the country as possible."⁵ Census data is an imprecise indicator of served and unserved areas and should not constitute the sole basis for distribution of support. Census figures are ill-suited for this task because the information identifies only residences and they do not take into account rural areas with large transient populations, such as highways, public parks and waterways. Every day, public parks and waterways are filled with Americans, but are largely without any telephone or broadband service. By distributing support only to unserved census blocks, the Commission would continue to leave these non-residential population centers without any access to wireless services.

Many American public parks and waterways host large populations at any one time, yet, strictly according to census block data, these areas are almost entirely unpopulated. For example, the massive Adirondack State Park in upstate New York (which includes WCX's 700 MHz license area) has a permanent population of about 137,000, but receives between seven to

⁵ See NPRM at ¶ 4.

ten million visitors each year. The town of Lake George, New York has only 3,500 residents, but the surrounding “unpopulated” Lake George Park has thousands of camp sites and swells to a summertime population of over 30,000. Limiting Mobility Fund support only to census blocks, would completely ignore the plain fact that Americans do not spend all their time at home and enjoy congregating in public areas. The Mobility Fund presents an opportunity for the Commission to support deployment of wireless services in non-residential areas that are nonetheless significant population centers.

As WCX has awaited ETC designation from the Commission and moved forward with its plans to provide high-cost-supported service in the Lake George area, the company has contacted the Adirondack Park Agency to begin the process of receiving approval for the construction of towers. The Park Agency has been extremely helpful and has shown great enthusiasm for WCX’s plans.

The Commission should allow these non-residential rural areas that have consistently large transient populations into Mobility Fund consideration. ETCs that can demonstrate that their licenses cover areas with significant average annual populations (even if not represented in the census data) should be allowed to submit bids in the reverse auction and, if those bids qualify, receive Mobility Fund support. This would base distribution of Mobility Fund support to ETCs on the actual population of their service areas, rather than on imprecise census data. High-traffic public parks and waterways constitute *de facto* population centers that have been traditionally overlooked by the USF’s high-cost program. Including these areas into consideration and will undoubtedly serve the public interest and could potentially support the deployment of wireless services in places of tremendous need.

V. The Commission must provide rural cities and towns the opportunity to challenge American Roamer maps that erroneously overstate coverage in order to prevent unserved areas from being effectively disqualified for support.

We seek comment on our proposed use of American Roamer data to determine areas unserved by current-generation mobile wireless services. ... Are there alternative available datasets we can use instead of, or in addition to, American Roamer data that would be more reliable or better suited for identifying unserved areas? (Para. 23)

WCX recognizes the difficulty the Commission faces when determining whether areas are served. The American Roamer reports are likely among the best sources of information available to the Commission, but these data should not be considered perfect. For instance, WCX has informally tested the availability of service in its New York 700MHz license area and concluded that American Roamer maps overstate wireless coverage in the area. The fact that errors like this can exist in any large-scale coverage data should be recognized by the Commission and there should be a means for municipalities to challenge or appeal erroneous data.

If the Commission does not allow a mechanism to challenge American Roamer data that describe unserved areas as served, then those unserved areas will be unjustly excluded from the Mobility Fund (unless American Roamer fixes the errors of its own accord). Wireless carriers serving rural areas mistakenly labeled as served (such as the areas surrounding Lake George, New York) would be effectively disqualified from consideration. In that instance, an American Roamer error would infect the Mobility Fund's disbursement of support and, ultimately, the local population would suffer.

American Roamer data are a good starting point for coverage determinations and should initially be presumed accurate, but that should be a rebuttable presumption. The fact is that the Roamer data is not accurate in many locations, especially in areas with rugged terrain. There is

simply no substitute for actual user fed empirical data. WCX proposes that local city or town elected officials should be provided the means to certify to the Commission that their constituents are or are not covered by wireless service or that the wireless service in the area is of substandard quality.⁶ A demonstration or certification to that effect should carry more weight than a national map and would be an important safeguard against any errors in the American Roamer data.

VI. The Commission must not allow disqualify or otherwise impede the eligibility of CETCs that provide wireless services in areas in competition with non-mobile services.

In addition, we seek comment on the extent to which the availability in unserved census blocks of other supported services using non-mobile wireless technologies should be a factor in determining whether those census blocks should be eligible for Mobility Fund support. (Para. 23)

The presence of non-mobile supported services in an unserved area must not disqualify an applicant from support because the Mobility Fund is intended to “promote the availability of *mobile services* in as much of the country as possible.”⁷ This purpose, however, would be entirely undermined if the presence of non-mobile services were grounds to deny applicants support or otherwise frustrate their eligibility. The Commission has made clear that it intends the Mobility Fund to be used to spur the deployment of wireless services in areas where it is currently not available. Whether there is non-mobile USF supported services present is immaterial to the purpose of the Mobility Fund.

Mobile wireless services foster important public benefits that cannot be realized through non-mobile services. Wireless services provide Americans the means to remain connected to others and to have access to emergency services outside of their home and work. These benefits

⁶ Rural areas where the wireless service quality is below that available in urban areas should also be considered unserved.

⁷ See *NPRM* at ¶ 4. (Emphasis added.)

are due entirely to the fact that wireless services enable mobility and they cannot be replicated with non-mobile services. Any denial of access to Mobility Fund support merely because of the presence of non-mobile services in the unserved areas would conflict with the Commission's objective and would leave areas without wireless service even further behind.

In fact, any competition between mobile and non-mobile services would be presumptively in the public interest. Competition fosters efficiency, price reductions, and further deployment. This competition, however, will almost certainly be resisted by the ILECs that currently provide the non-mobile services in the unserved areas. The Commission cannot allow ILECs to have a veto over the distribution of Mobility Fund support and to obstruct 3G and 4G deployment.

Such resistance to wireless support from ILECs is not merely hypothetical. During WCX's ETC application process in Texas, several rural ILECs intervened and opposed designation in their service areas. The rural ILECs argued that the public interest would be harmed if they were to face any competition from wireless services. Texas PUC staff then communicated to WCX that they were inclined to agree with the rural ILECs' position. WCX reluctantly amended its application to remove all rural ILEC service areas and limit it to only wire centers of non-rural ILECs operating in rural areas (*i.e.*, AT&T Texas and Verizon Southwest).

The FCC must not allow ILECs to have this same veto power over the Mobility Fund and should provide a clear statement in this proceeding that ETC designation cannot be refused in order to insulate non-mobile services from competition with mobile services. Mobile wireless services provide Americans with capabilities and benefits that they cannot get from non-mobile services. Excluding those who spend a great deal of time in rural areas from these benefits

would only serve to exacerbate the digital divide between rural and non-rural populations. This proceeding offers the Commission the opportunity to make an unequivocal statement that those that live in rural areas cannot be refused the benefits of wireless service merely to serve the interests of those that oppose market competition.

VII. Conclusion

Our experience in attempting to work within the system for several years has led WCX to believe that the current system suffers from regulatory capture by incumbent interest. Below are some “structural” concepts that may be helpful to avoid capture of the new mobility fund by private interest so that the public interest will be served:

- 1) Require that user-driven communities, not the incumbents, staff and manage the fund and to comprise the Board (today the USAC Board is staffed and controlled by those who receive the largest sums of monies, this obvious conflict of interest should be avoided by having a consumer focused governance) ;
- 2) Limit any high-cost subsidy mechanism to a maximum period of years before it automatically sunsets – thus allowing new technology and business methods to be introduced as they are developed;
- 3) Require all fund recipients to adhere to best practices on non-discrimination and transparency, especially with respect to:
 - a. offering high speed transport “Special Access” services over fiber based networks – for example make it a condition of receiving funds that you offer a Gig-E or 100 Meg Ethernet product to other service providers at rates established by the Fund if the fund pays for a fiber build;

- b. Requiring direct “interconnection and peering” with educational and health institution networks – currently giants like AT&T and Comcast refuse to peer with entities like the University of Texas and Stanford; and
- c. Requiring adherence to a “model” terms of service agreement which spells out consumer’s right.

Finally, there should be a simple requirement that any subsidized service actually be materially used in order to receive subsidy. WCX has seen estimates that large portions of the current USF expenditures go to companies which provide services that simply are not used in a material way.

WCX implores the FCC to examine the shortfalls of the existing mechanisms as it creates new ones so we do not repeat our mistakes.

Respectfully submitted,

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